

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

SOVERAIN SOFTWARE LLC, )  
Plaintiff, )  
v. ) Civil Action No. 6:04cv14  
AMAZON.COM INC. and ) Hon. Leonard E. Davis  
THE GAP, INC., )  
Defendants. )

**SOVERAIN'S MOTION FOR PROTECTIVE ORDER**

Pursuant to the Court's Orders dated December 17 and December 30, 2004, Soverain Software LLC ("Soverain") files this Motion for Protective Order. This motion relates to Amazon.com, Inc.'s ("Amazon") Second Amended Answer, Affirmative Defenses and Counterclaims ("Second Amended Answer"), filed under seal on December 14, 2004. (D.E. 135.) Concurrently with this Motion Soverain is filing a Motion to Strike certain portions of the Second Amended Answer. If Soverain's Motion to Strike is granted, the issues herein will be moot. Soverain therefore requests that Amazon's Second Amended Answer remain sealed pending a ruling on Soverain's Motion to Strike. As grounds for this Motion, Soverain states:

1. On December 14, 2004, Amazon filed its motion to file the Second Amended Answer under seal, stating as a basis for the motion that the Second Amended Answer "references documents that Soverain has designated CONFIDENTIAL under the Protective Order." (D.E. 133.) In total, over seventy such documents are referenced in Amazon's pleading, some quoted extensively, and others attached as Exhibits. (D.E. 135.)

2. As set forth in additional detail in Soverain's above-referenced Motion to Strike, Amazon's reliance on other documents outside of the pleading is a clear violation of the Court's December 3, 2004, Order which granted Amazon leave to amend, but did so with the requirement that Amazon's amendment "shall not rely on references to other documents or its invalidity contentions. If Amazon is unable to plead an allegation(s) with the requisite specificity, it shall omit such allegation(s) from its answer." (D.E. 130.) Soverain submits, therefore, that those portions of the Second Amended Answer that rely on references to other documents outside of the pleadings are improperly pled and therefore properly stricken from Amazon's pleading.

3. It is Amazon's improper references to documents outside of the pleadings that necessitated Amazon's filing of its pleading under seal and led to the filing of this Motion. Had Amazon followed the Court's Order and refrained from referencing documents outside of the pleading, there would have been no need to file the pleading under seal – and no resulting need for a Protective Order. Likewise, if Soverain's Motion to Strike is granted, the references to outside documents will be eliminated and the need for a Protective Order will be moot.

4. Accordingly, Soverain requests that the Second Amended Answer remain sealed pending a ruling on Soverain's pending Motion to Strike. If the Motion to Strike is granted, and Amazon is required to replead its pleading without the references to other documents, the issue will be moot. Soverain further requests that if the Motion to Strike is denied, the Second Amended Answer remain sealed until such time as Soverain is required to respond to Amazon's pleading and that Soverain be granted leave to seek a Protective Order to protect any Confidential Information at the time that it responds to those allegations subject to its Motion to Strike.

5. A proposed Order granting this relief is attached for the Court's convenience.

Respectfully submitted,

  
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ATTORNEYS FOR PLAINTIFF

SOVERAIN SOFTWARE LLC

**PROOF OF SERVICE**

The undersigned certifies that on the 14<sup>th</sup> day of January, 2005, the foregoing pleading was electronically filed with the Court. Pursuant to Local Rule CV-5, this constitutes service on the following counsel:

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[Proposed]

**ORDER GRANTING SOVERAIN'S MOTION FOR PROTECTIVE ORDER**

This Cause having come before the Court on Plaintiff Soverain Software LLC's Motion for Protective Order relating to Amazon's Second Amended Answer, Affirmative Defenses and Counterclaims ("Second Amended Answer"), it is Ordered and Adjudged that the Motion is GRANTED.

Amazon's Second Amended Answer shall remain sealed until a ruling on Soverain's pending Motion to Strike Amazon's Second Amended Answer, Affirmative Defenses and Counterclaims ("Motion to Strike"). If Soverain's Motion to Strike is granted, the issue will be moot. If Soverain's Motion to Strike denied, the Second Amended Answer shall remain sealed until such time as Soverain is required to respond to Amazon's Second Amended Answer. Soverain is further granted leave to seek a Protective Order to protect any Confidential Information at the time that it responds to those allegations in the Second Amended Answer that are subject to Soverain's Motion to Strike.